

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**DAVID MARQUAR**

**PLAINTIFF**

**VS.**

**CIVIL ACTION NO.: 1:11-CV-00054-LG-RHW**

**OFFICER CHRIS ALLEN , INDIVIDUALLY  
AND IN HIS OFFICIAL CAPACITY AS A  
DULY COMMISSIONED POLICE OFFICER  
FOR THE CITY OF WAVELAND, MS, ET AL.**

**DEFENDANTS**

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**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

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COME NOW, Defendants the City of Waveland, Mississippi, Chris Allen, James Varnell, and David Garcia (collectively, "Municipal Defendants"), by and through their attorneys of record, and respectfully submit this Motion for Summary Judgment. The Municipal Defendants would show as follows:

1. Plaintiff David Marquar brings various federal and state law claims related to his arrest by Waveland police officers in February 2010. These include a Fourth Amendment excessive force claim brought pursuant to 42 U.S.C. § 1983, as well as claims of assault, battery, unlawful arrest, unlawful imprisonment, and others.

2. Marquar's claims are uniformly meritless. The federal claims fail because Marquar was convicted of resisting arrest and is barred from collaterally attacking his conviction by *Heck v. Humphrey*, 512 U.S. 477 (1994). Some of the state law claims are barred by the exemption provisions of the Mississippi Tort Claims Act (MTCA), MISS. CODE ANN. § 11-46-9 *et set*. Others simply fail as a matter of law, as set forth more fully in the Memorandum of Law submitted herewith.

3. In addition to their Memorandum of Law, the Municipal Defendants rely on the following documents submitted herewith:

- a. Excerpts from the Deposition of David Marquar (Exhibit 1);
- b. Excerpts from the Deposition of Chris Allen (Exhibit 2);
- c. Patient Care Report (Exhibit 3);
- d. Municipal Court Order (Exhibit 4);
- e. Police Custody Form (Exhibit 5);
- f. Waveland Police Department Electronic Weapons Policy (Exhibit 6);
- g. Law Enforcement Certification for Chris Allen (Exhibit 7).

4. For the reasons discussed herein, in the Memorandum of Law submitted herewith, and in any hearing held on this motion, Municipal Defendants respectfully request that the Court grant their Motion for Summary Judgment and that all of Plaintiff's claims be dismissed with prejudice pursuant to Rule 56 of the Federal Rules of Civil Procedure, with all costs taxed to the Plaintiff.

THIS, the 31<sup>st</sup> day of October, 2012.

Respectfully submitted,

**PHELPS DUNBAR, LLP**

BY: /s/ W. Brett Harvey

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**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I, BRETT HARVEY, do hereby certify that I have filed the foregoing *MOTION* via the CM/ECF system, which provided an email notice to the following individuals:

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***ATTORNEY FOR PLAINTIFF***

SO CERTIFIED, this the 31<sup>st</sup> day of October, 2012.

/s/ W. Brett Harvey

W. BRETT HARVEY